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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,266	02/26/2004	Guy Hubert Stephane Sylvain Culeron	AA-615M2	5154

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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/787,266	CULERON ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3/28/05
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Specification

1. The disclosure is objected to because of the following informalities: on page 11, lines 10 and 12, the copending Applications should be updated.

Appropriate correction is required.

Claim Objections

2. Claims 1-2 and 8 are objected to because of the following informalities:

a) in claims 1-2, clarification is requested for the term "Pa*s", that is, whether the asterisk is necessary;

b) in claim 8, line 4 "dyeing" is misspelled.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall (US Patent No. 5,804,546).

Hall teaches a cleaning composition, preferably a shower **gel form** which a lather is produced instantaneously or in a very short time and which does not involve the use of an aerosol, the composition comprising component 1 and component 2 which comprises 16.8%

sodium lauryl ether sulphate, 1.5% cocamidopropyl betaine, 1% amineoxide, 3% coconut diethanolamide (a total of 22.3% surfactant), and the components are charged into separate compartments within a flexible container **10** illustrated in the drawing and dispensed through a nozzle as a dense, creamy foam (see col. 1, lines 32-35; col. 2, lines 28-53; drawings). Even though Hall does not explicitly disclose the viscosity of the composition and the foam to weight ratio of greater than about 2 ml/g, the composition which is in **gel form** should inherently possess the recited viscosity and exhibit the recited foam to weight ratio because the same ingredients contained in a non-aerosol container have been utilized. Hence, Hall anticipates the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-4, 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (US Patent No. 5,635,469), hereinafter "Fowler".

Fowler teaches a foam producing cleansing product which comprises a foamable cleansing composition and a compressible nonaerosol dispenser (see col. 4, lines 13-15), the foamable cleansing composition comprising from about 0.1% to about 20% of a surfactant, the composition having a viscosity from about 1 cps to about 200 cps (0.2 Pas) (see col. 2, line 59 to

col. 3, line 28). Foams containing relatively large diameter bubbles can be refined by forcing said foams through various foam refining means including screens, porous frits, porous media (which reads on sponge) and combination thereof (see col. 19, lines 63-66). The quality of the foam is also affected by using additional foam refining means, for example, foams produced using a coarse-mesh screen 7 in the inlet conduit 5 of the foam dispensing nozzle with a fine-mesh screen 30 close to the discharge end of the nozzle can be improved by the addition of an intermediate (third) screen between the two original screens (see col. 22, line 59 to col. 23, line 5). The volumetric flow rates of the composition are about right for skin and hair care products and cleaning products such as shampoo and kitchen cleanser (see col. 27, lines 13-26). The compositions hereof will preferably be in the form of a stable single phase, most preferably a true solution, however, the compositions hereof can be in the form of stable emulsions (see col. 13, lines 16-19). Fowler, however, fails to disclose the foam to weight ratio of the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the foam to weight ratio of Fowler to be within those recited because similar ingredients contained in a non-aerosol containers have been utilized.

7. In the alternative, claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler in view of Boehm et al. (US Patent No. 3,422,993), hereinafter "Boehm".

Fowler teaches the features as described above. Fowler, however, fails to specifically disclose as foam-generating dispenser comprising a sponge.

Boehm teaches a dispensing device and package for common household products for cleaning as well as personal products wherein the dispenser is provided with a porous material, for example the natural sponges (see col. 3, lines 48-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use sponge as the porous media in the dispenser of Fowler because it is known from Boehm that the common porous media in foam dispensing devices are sponges.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler in view of Baeck et al. (US Patent No. 5,679,630), hereinafter "Baeck"

Fowler teaches the features as described above. Fowler, however, fails to disclose the incorporation of enzymes into the composition.

Baeck teaches protease enzymes having improved proteolytic activity, substrate specificity, stability and/or enhanced performance (see col. 1, lines 53-58) which can be used in any detergent composition or concentrated detergent compositions where high sudsing and/or good insoluble substrate removal are desired (see col. 21, lines 1-12) such as in cleaning fabrics, cleaning dishes and for personal cleansing (see col. 2, lines 16-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate enzymes into the composition of Fowler because this would provide improved proteolytic activity, substrate specificity, stability and/or enhanced performance as taught by Baeck.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/787,343 in view of Van Dijk et al. (US Patent No. 5,663,136), hereinafter "Van Dijk".

The copending application teaches a similar foam-generating kit except that the copending application requires a high surfactant composition comprising at least about 20 wt% of a surfactant whereas the present application requires a high viscosity composition having a viscosity of at least about 0.05 Pas.

Van Dijk teaches that high active surfactant pastes, having an activity of at least 30%, have a viscosity in the range from about 5,000 cps (5 Pas) to 10,000,000 cps, preferably from about 20,000 cps (20 Pas) to about 100,000 cps (see col. 3, lines 31-48; col. 4, lines 9-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect a composition having a viscosity of at least about 0.05 Pas to

have a high active surfactant content because it is known from Van Dijk that high active surfactant pastes, having an activity of at least 30%, have a viscosity in the range from about 5,000 cps (5 Pas) to 10,000,000 cps.

This is a provisional obviousness-type double patenting rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. The references are considered cumulative to or less material than those discussed above.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon
Primary Examiner
Art Unit 1751